

Attachment # 2
of 3

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August 2, 2004

Mr. Christopher Cox
Associate General Counsel
Progress Energy Service Company, LLC
P.O. Box 1551
Raleigh, NC 27502

Re: Notice of Termination of Contract, # 2640

Dear Mr. Cox:

We have received your letter dated July 22, 2004, in which you inform the County Attorney of Progress Energy's completed divestiture of PES, its energy services subsidiary, to Energy Systems Group, LLC, which is a subsidiary of Vectren Corporation. However, in accordance with Article No. 4 (B)(1) of the above-referenced Agreement between Leon County and Progress Energy Solutions, we regret to inform you that we hereby exercise our right to terminate the above-referenced Contract effective immediately. We also hereby notify you that you are in breach of said contract.

As you are aware, the subject Investment Grade Energy Audit Agreement was entered into on December 13, 2003, by and between Leon County, Florida, a charter county, and political subdivision of the State of Florida (the "County") and Progress Energy Solutions, Inc. (PES), located at 17757 U. S. Highway 19 N., Suite 560, Clearwater, Florida 33764 (the "Company").

Pursuant to Article No. 4(B)(1) of the above-referenced Agreement, Leon County reserves the right to terminate this Agreement if:

The Company fails to complete the Energy Audit and deliver the Report to the Customer by the date established in Article 1 I. above; or fails to obtain a written extension of that date from the Customer. Termination under this subsection B (1) shall be effective upon the Company's receipt of written notification from the Customer that the deadline for submission of the Energy Audit and Report has passed."

First, we received, in two parts, a third draft of partial Energy Audit Reports on June 18 and June 23, 2004. However, the report covers to said reports inaccurately indicate that the reports were prepared on June 18 and June 19, 2004 (193 days after the contract was entered into and almost three months beyond the required report submission date) (Attachment #1). Pursuant to Article 1 I., Submission of the Report:

The Report shall be completed within 110 days. The price for the completed Energy Audit and Report is \$150,519.00."

Article 5, Section 1, Agreement Term provides,

The Agreement term shall commence on the date the Agreement is executed by the Customer and end on May 10, 2004, unless earlier terminated pursuant to the provisions of Article 4 hereof."

An equal opportunity/affirmative action employer

Accordingly, the reports should have been completed on or before April 1, 2004. Leon County has neither extended the Agreement term nor the Report submission deadline.

Furthermore, the required number of Energy Audit Reports are not in compliance with Article 3, subsections (2) and (3) of the Agreement. Although, the Agreement provides for our receipt of fourteen (14) total reports, we received in total, only two (2) Energy Audit Reports for the Level II & III facilities combined. Therefore, under Article I.I of the Agreement, the Energy Audit Reports are incomplete and untimely. This is unacceptable.

Second, Article 1 section C of the Agreement permits the County to inspect and examine the Energy Audit Reports. The aforementioned third drafts of the Energy Audit Reports were delivered to the County in June, the information that was contained within these Reports was deemed insufficient, and we informed your management of said insufficiency. Article 1 (C) of the Agreement requires that:

Company shall examine the most recent 36 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging; or selecting the most representative contiguous 12 months."

On the contrary, PES failed to review the most recent 36 months of data, and has instead only reviewed and utilized the most recent 12 months of data, which PES did not designate as the "most representative contiguous" when first used in the Report. (Attachment #3):

In addition, because Leon County therefore deems the aforementioned reports as "insufficient" and "not satisfactory in all material respects" pursuant to Article 3 (A) of the referenced Agreement, it is our further position that we are not obligated to remit any funds to PES (or its assigns) for these Energy Audit Reports under Article 4 (B)(i) of the subject Agreement.

Third, PES is not in compliance with Article 5, section 5 of the Agreement. Under this provision, PES is required to have "all personnel necessary for the effective performance of the Energy Audit" and further that these employees "shall be qualified to perform the services required under this Agreement." However, as of July 16, 2004, Leon County learned that the project manager and another key employee whose energy auditing and performance contracting credentials were previously used by PES to be selected for the project, were not transferred or retained as employees of the new company, Energy Systems Group. Instead, we learned that these individuals have been hired as the energy management team for an energy services competitor in Florida. Due to these noted changes in personnel, and the lack of not having yet replaced their job positions with other suitable and qualified staff, PES is in breach of this provision.

Finally, PES is in breach of Article 5 section 8 of the Agreement, in that PES assigned this Agreement to another company without the prior, written consent of Leon County. According to your letter, dated July 22, 2004, you have confirmed that on July 9, 2004, Progress Energy Solutions, the Company in which this Agreement was negotiated with, was bought out by Energy Systems Group, and is "a wholly-owned subsidiary of Vectren Corporation." Furthermore, your letter has stated that "all contracts, related obligations and employees of Progress Energy Solutions remain with Energy Systems Group. This includes all contracts that Progress Energy Solutions/Energy Systems Group has with the State of Florida and with local government customers, including Leon County". This is unacceptable.

The subject contract provides in Section 8, Assignment:

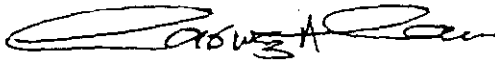
This Agreement may not be assigned by the Company without the prior written consent of the Customer.

Mr. Christopher Cox, Associate General Counsel
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Accordingly, we hereby terminate this Agreement effective immediately pursuant to the said grounds enumerated above, and Article 4(B)(i), of said Agreement

Sincerely,



Parwez Alam
County Administrator

Attachments:

- 1.) Copies of Dated Covers from the final drafts of Energy Audit Reports
- 2.) Copies of Level II & III Scope Overviews from Energy Audit Reports
- 3.) Copies of Energy Data Disclaimer from Level I Energy Audit Reports

cc: Herbert W.A. Thiele, County Attorney
Kimberly Dressel, Management Services Director
Thomas P. Brantley, P.E., Director of Facilities Management & Construction